IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2093 OF 2004

ALONG WITH

CRIMINAL WRIT PETITION NO.2094 OF 2004

Dilip P.Selarka ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

.....

Mr.S.V.Marwadi for Petitioner.

Mr.S.R.Shinde, A.P.P. for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2004.

P.C.

1. Heard Mr.Marwadi for Petitioner and Mr.Shinde, A.P.P. for Respondent No.1. None appears for Respondent No.2 inspite of service. As Respondent No.2 has been served, matter proceeds in terms of order dated 21st October 2004.

2. The short question involved in the present

Petitions is: whether the complaint as filed by the Respondent No.2 makes out any case as against the present Petitioner/accused No.2. It is not in dispute that the Petitioner is not the signatory to the cheque. The only allegation in the complaint is that the Petitioner/accused No.2 is the Director, and therefore, in-charge of, and responsible for the day-to-day business of the accused No.1 Company. In the complaint, the complainant has referred to the reply given by the Petitioner, pointing out that the Petitioner has already resigned on 31st May 2001, whereas, the cheque in question was issued posterior to that date. There is no assertion in the complaint that the stand taken by the Petitioner that he has resigned, is false or unacceptable to the complainant. Be that as it may, even taking all the allegations in the complaint as it is, there is nothing to indicate the complicity of the Petitioner in relation with the offence committed by the accused Company, as is required by provisions of Section 141 of the Negotiable Instruments Act. In other words, the material facts to make the Petitioner liable for the

commission of offence by the Company are lacking in the complaint. If it is so, the criminal action cannot be allowed to proceed in law. Recently, I had occasion to deal with this aspect in **Criminal Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. decided on 14th December 2004.**

3. Accordingly the Petitions succeed in terms of prayer clause (b), insofar as Petitioner/accused No.2 is concerned.

A.M.KHANWILKAR, J.